## THE NEW-YORK TRIBUNE

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## THE TRIBUNE.

DEFENCE OF COM. MACKENZIE.

Naval Coart Martial. [Reported for The New-York Tribune ]

WEDNESDAY, March 22. The Court met to-day at 11-o'clock in the chapel at the Brooklyn Navy Yard, where their previous sessions have been held. The room was densely crowded by a large number of gentlemen and ladies, assembled to hear the argument in defence of Cemmander Mackenzie, which it was understood would be presented. After reading the record of the preceding day, the President of the Court called on Commander MACKENZIE for his argument in defence. Capt. M. requested that GERIGE GRIFFEN Esq. of his counsel, might be permitted to read it in his behalf. The Court acceding, Mr GRIFFEN rose, and, amid the profoundest attention of all assembled, read the Defence-which was as fel-

SAMUEL CROMWELL, and Seaman ELISHA SMALL, on board the United States brig Somers, on the 1st day of December, 1842. It will be found that these three charges are but variations of one and the same identical charge; which is, that such execution was directed and carried into effect without justifiable cause. To the fourth charge, alleging that taunting and unofficer-like laggange was used to Mr. Spencer by the accused at the time of the execution; and to the fifth charge, alleging that the conduct of the accused towards vas cruel and oppressive, nothing is required to be defence to these charges is respectfully, yet condidently, submitted on the plain, full, and conclusive evidence before the Court, without a word of comment.

In judging of the necessity of the execution, it is of vital importance to ascertain preliminarily, whether a mutinous conspiracy in fact existed on hoard the Somers, and whether

That such conspiracy existed; that it had for its object the conversion of the brig into a piratical cruiser; that such object was to be effected by the murder of the officers and authful of the crew; and that Mr. Spencer and Small were not only parties but ringleaders, in the conspiracy—appears from their own repeated and solemn declarations, and from unequivocal documentary evidence. Mr. Wales testifies that on the 75th of November, Mr. Spencer took him aside to a place of secreey, and communicated to him the whole mutinous scheme. He told him that he was leagued with about twenty of the crew to get possession of the brig, murder the commander and officers, and commance piracy.— Mr. Spencer deadled to Mr. Wales the plan of the opera-tions, was systematic, and evinced much deliscration. That this communication was a frolic of boyl-h fancy, as has been sometimes suggested, in clearly disproved by Mr. Wales, and by the intrinsic circumstances of the case. The appearance and manner of Mr. Spencer were earnest and grave; before he would make his comunication, he bound Mr. Wales by an oath of secrecy; and previous to parting, told him that if he betrayed the secret he should be murdered. Small was present at a part of this interview, understood the nature of the communication, and expressed his gratification that Mr. Wales had consented to be one of them. Mr. Spencer told Mr. Wales that the plot was de-tailed in a secret paper in his possession. This paper was found next day in Mr. Spencer's razur case and is in his hand-writing in Greek characters. It is in two pieces, forming however, parts of one whole; and has been, there fore, generally and correctly called the Greek paper, in the singular number, and is so called in this defeace. One of i pieces contains the names of the conspirators and of other xpected to join them, marking them as certain, doubtful, r to be retained on board, willing or unwilling, together that a few explanatory remarks; the other piece, torn from a book on geometry, and having its back covered with geo-metrical figures, assigns to some of the chief conspirators their stations when the outrage should occur. This Greek locument is the official record of the mutinous conspirac prepared by the chief conspirator; and, like other records contains on its face, against the parties and privies to it, the

cy, and the guilt of Mr. Spencer and Small, and proceed at once to the final scene just before the execution. There Mr. Spencer and Small, with their dying lips voluntarily confessed their guilt in the presence of the officers and crew, and acknowledged that their punishment was just; Mr Spencer adding that he had attempted a mutiny on board the two national vessels in which he nad last spiled, and that his piratical propensity was quite a main. Surely no impocent man ever confessed himself guilty of a felony or other heinous crime, unless the confession was extorted from him by the rack or some other instrument of torture. To condemn a man out of his own mouth, is a rule of evidence which the Judge of all the earth has condescended to tell us he will himself adopt in that great day when judgement will not be based on any fallible proof.

The guilt of Cromwell is not less manifest. The badness of his general character and co duct; the sudden change of his demeanor towards the apprentices, ceasing to treat them with harshness as he had been wont, and affecting towards them popular manners, as he found their adhesion to the conspiracy needed; his repeated and profane declarations.

## W-MAIN TRA

BY GREELEY & McELRATH.

OFFICE NO. 160 NASSAU-STREET.

FIVE DOLLARS A YEAR.

NEW-YORK, THURSDAY MORNING, MARCH 23, 1843.

"malk the plank." And yet the lesser boys c mposed a large portion of the crew. The foundations of the mutinous conspiracy had been laid deep, and broad, and firm, for an officer of the brig had been the chief architect. He though bound induty and in bonor to use his best efforts to promo e the discipline and elevate the mental and moral character of the crew had been for weaks codel my templayed. acter of the crew, had been for weeks sedul usly employed paper, subtracts nothing from the proof of his guilt. He was too adroit and wary to have his own name registered without disguise on the guilty record. He wanted the benefit of the omission of the name of Gromwell, in case the evertheless, the commander of the Somers proceeded ith great caution. He first caused Mr. Spencer to be put-irons which was done on the 25th of November. This, far from natimidating, only irritated the mutinous spirit paper should be discovered. Doubtless the name of An-The next day Cromwell and Small were arrested. Still the drews, no where to be found in the ship's papers, but stand-ing in the Greek document next to that or Mr. Spencer aim-self, was intended to designate, not a fictitious person, but his own real and efficient lieutenant in guilt. If Cromwell ous spirit continued to gather strength. Then four delinquents were added to the number of the prisoned; the discontented of the crew had seven objects of sup had been by turns a pirate and a slaver, it was probably posed oppression before them; seven themes upon which to their yet uncommunated shipmates; seven not the first time that he had found it convenient to have two names in use. The averment of Mr. Spencer that the name of Andrews on the Greek paper was intended for common wrongs to swenge. Besides, the unconfined guilty feared that their own turn might come next. The Court Martial and gallows at home hauned their morbid losa-Small, was manifestly a mere pretence. If it had been designed for Small, the insertion of Small's own proper name atterwards on the paper would have been a needless droprinations. Seven of their a complices were in irons, either if whom by turning State's witness, ungat ensure their own conviction. To arrive in port was to come within the

aws of dasger, probably of death. The words of the com-

mander that the offenders would be taken home for trial, were perpetually sounding in their ears. They became convinced that the boldest course was to them the safest one; that the pirate's black flag was now the surest protection against the violated laws of their country.

Never was a crew where malcontents could have had a fairer chance of making procedures. The crew of the Somers were almost all apprentices; many of them men in this sear steemen, but all of them boys in mind. Their against the violated laws of their country. youthful feelings were peculiarly open to sympathetic ap peals; their undisciplined imaginations hable to be easily beguiled by seductive pictures of the freedom and pleasure of the rover's course. The season of youth, especially of untutored youth, is proverbially exposed to temptations. to the crew of the Somers, carried home, as they were, by rate's life. How resistless must have been the influence of ers might have said, "The world is not thy friend, nor the world's law?" It was impossible for the officers to draw a line of separation between the sound and the unsound perts of the crew. They slept and atc in the same apartment, rougs. The life of common seamen on ship-board is ne cessarily gregarious. They can communicate with each other by whispers, by signs, by looks. The officers could no mere check the progress of mutiny among the crew than mey could the progress of disease. Nor could they ascer-tain how far the mutiny had extended. They knew that the moral malady had been constantly on the increases ace the day when Mr. Spencer had boasted that he had already twenty associates at his call; and it required the omniscien eye to select these, if any, on whom the officers might now rely. To have held an inquest with the view to ascertain the names of the unconfined malefactors would have been worse than useless. Their universal asseveration of innocency could not have gained credence against the daily and nourly demonstrations of their guilt. And battle manes of the unconfined malefactors been truly ascertained, there could have been no action on the discovery. There was not pace to hold, or force to guard, any increased number of prisoners. And to have singled out the culprits by name, and branded them by a sort of anticipated conviction, and yet have permitted them to roam at large, interminging freely with the crew, with the halter of the law about their necks, would only have made the culprits themselves more inturiated and desperate; whilst the government of the ship, by exposing its own imbecuity, would have sunk into

ship, by exposing its own indeeding, would have suit and disrepute and contempt.

Between the arrest of Mr. Spencer and the execution, the mutinous indications were unceasing. Yet were they deep radier than loud. The fire beneats the surface which causes the earthquake, reserves for the hour of the explosion, its more parable and awful demonstrations. In this mstance especially, the mutiny had now been taught by its own brief history to be circumspect and subtle. Nevertheless the flame, covered but not suppressed, gave caseless and sure signs that the time of its bursting forth was near at and sure signs that the time of its bursting forth was near a hand. The general disobedience of orders when first an-nounced, and the stern defiance with which they were afgroups or secret consultation, and their stealing away at the approach of an officer or else changing the discourse to some indifferent subject, and raising their voices to the ordinary key; the carrying away of the main top-gallam mast by the sudden and violent perk of the weather royal ment of a mutiny on land is to be measured out by the discretion of a Gourt Martial. The Court may exact life, or it may impose a lesser, or even a slight punishment. The wisdom of the national legislature has thus strikingly discriminated between the guilt of the same act done on land or at sea. The discrimination is just; a mutiny on the ocean is a more dangerous offence than one on land, and needs the cheek of a severer penalty. The commander of a single tase cannot, like a commander or shore, invoke the aid of some neighboring troops, or appeal to the patriotism of some neighboring troops, or appeal to the patriotism of the sturdy militia. From an overpowering land mutiny, the faithful may retreat as from a burning edifice; but from a minity at sea, there is no retreat beyond the narrow limits of the ship. A mutiny on land does not always vitally endanger the interests or the fame of the country. But the very object of a mutiny at sea, in the naval service, is the round the following of the national honor. Hence the law, with an unwavering hand basengraved on the list of capital offences, all naval mutinies, whether great or smail, whether matured or yet in their carly development. Nor need the evil intent be bouled forth in action, to complete the legal crime. The mutinous imagining of a single heart it creamed to provide the constraints and the constraints of the ship; the objections removal of the hand tray of the main top-gualton mast by the sarder and visited that the notion to mast by the sarder and with the intent to mrow overboard mast by the saiden and volent gets of the main top-gualting mast by the saiden and will the intent to mrow overboard mast by the saiden and will the intent to mrow overboard with the intent to mrow overboard with the intent to mrow overboard mast by the saiden and will the intent to mrow overboard with the crew were called aft to the main try-sail sheet, with the further circumstance that the rushing aft was continued even after the crew had been distinctly ordered to return forward; the repeated missing of the master without excuse by those named in the Greek paper, in defiance of the government of the ship; the mysterious removal of the handspikes, heavers and bolystones, so as to make them accessible to the conspirators at the moment of need, and the sharpening of the African knile and battle-axe; the stealthy giances of the conspirators towards the places in the ward-room and steerage where the officers off duty kep, their arias; the declaration by one of the conspirators is that he would like to get the African knile into the hands of Mr. Spencer, and that the knile would yet have to do a great deal of shughter; the raising of a handspike in a threatening manner by the same conspirator against an officer, whom he sought to take natwares; the crassless efforts of those named in the Greek paper to steal aft under pretence of some call of duty so as to be near the prisoners, watching an opportunity for communication with them, watching an opportunity for communication with them, and the frequent laterchange of significent glances between the prisoners and them; the sufferness and moroseness of the crew; their whisperings; the senitions expressions which were occasionally overheard; the insolent and me-nacing tone assumed by them; their ominous expressions of displeasure at the prisoners being kept in irons; are among the numberless circumstances, which collectively force on the intelligent and experienced observer the full conviction

becoming greater and greater. It was now manifest that the government of the brig had been despoiled of its moral power. It lost that instruct of discipline, that loyally to authority, "that subordination of the heart" which form the conservative elements in that lit le floating world, a nature of the conservative elements in that lit le floating world, a nature of the conservative elements in that lit le floating world, a nature of the conservative elements in that lit le floating world, a nature of the conservative elements in that lit le floating world, a nature of the conservative elements in that lit le floating world. tisnal ship. Acarehy, deep and wide spread, was predominant; and physical force had become the sale arbitress. The conspiracy, confident in its strength, matured in far omegai rank, and all the influence of telents, manners, and acquirements, well fitted for the work of demonstration.

It is well known that a mutary unless suppressed at its very outset, usually increases as it goes on, in a fearfully rapid ratio, especially when thus fomened and inspelled.

Nevertheless, the commander of the Somers proceeded with great caution. He first commander of the Somers proceeded by the matiny to a successful to a suc officers and faithful of the crew as comparatively a very little thing. The lives of military men, whether on land or at sea, are plighted to their country; and compared to the honor of that country, individual life is as the drop of the ocean. But the nation's honor was now at stake. An American vessel of war was about to become a piratical liy, and coinsecrated as a defender of her country's glory, and one of the projectors of the great common wealth of clivilized than, was about to be torn from ker sphere and let losse a lawless wanderer upon the deep, carrying along in her devious course, like a comet loosened from its orbit devastatish, and terror, and death. Perhaps no vessel could be found better fitted to become the pest of the ocean. Self dom sur passed in speed by any thing propelled by sails; of sufficient strength to overcome merchaminen; so small and light that, if pressed by superior force she might retire beyond their reach and hide herself in shoal water; capable of supplying herself from her prizes with men, navai stores, your men reach and man her prizes with men, naval stores, provisions and water, she might have made her home on the seas without ever entering port. There, swift and de-structive as the pestilence, by turns showing herself on the Atlanuc, and then in the Pacific and Indian Oceans, she might have been the world's terror for years, without its being known from whence the scrurge came or whither it

> went.
> Under these circumstances what was the commander of
> the somers to do? He was alone on the ocean. He could
> not igvoke a regular court martial. He asked the best and
> only counsel within his reach. He made a written appeal
> to his efficers for their advice. His officers, after examining the witnesses, and with full deliberation, returned him
> they written against and solvent independ, that the their written, unanimous, and solemn judgement, that the execution of the three ringleaders of the untiny was indispensably necessary for the safety of the vessel, and the lives of the Lithful on locard. With this judgement of the only court within his reach, his own opinion concurred. court within his reach, his own opinion concurred. The high seas intraished no learned jurists with whom he might coosnit. But he had with him a volume of Nature's laws, written by the finger of God on the human heart. In that volume he read that necessity ordains its own controling canons; that they who seek unlawfully to slay, may themselves be slain without formal process, when the sel rvation of the assauled renders the sacrince inevitable .elements of national jurisprudence; and there he read, tha when, on some remote station, or on the solitary deep, the commansing officer, by land or sea, bound, as it were, by an oath to protect, at the expense of life, or bundreds of lives, the vital interests, and sacred honor of his Country, stall find those vital interests and that sacred honor about to be deeply and incurably wounded by a band of a postate folions, and that the evil cannot be averted but by the death of those felons, without the formalities of law, he is in out. of those felons, without the formalities of law, he is in outy bound to rouse up any spirit to the majesty of the occasion, and poising himself on his own magnaniaty, grasp, with unfaitering hand, the swerd of righteous, though summary, retribution. The execution took place. It was foreseen retribution. The execution took place. It was foreseen that the remedy would be decisive; for of the malcontents there were none, save Mr. Spencer, Gromwell, and Small, who could navigate the vessel; and it was known that guitt would not trust uself to the broad ocean without a navigator. The commander of the Semers was influenced by no private motives. He had no feeling of personal hostility against the prisoners. To the deep agony which their fate caused him insofficers have borne witness. He was conscious that the nation which he served was in only a two to not on. the nation which he served was jea ously alive to any unu sual exertion of power; and that, upon his return home be would be called to a strict account for the shedding of blood not drawn from the public and declared enemies of his coun-

not drawn from the public and declared enemies of his country. He was not unmindful that the dis inguished father of the chief culprit held an office of high trust and authority, and that the nostile influence of that father would be an crit not lightly to be encountered. But the extgency of the case impelled him forward. The path of honor and cosscience was ringged, but it was plain. There was no bye path to the right or to the left by which he could example. And the the right or to the left by which he could escape. And he trusts that, had he chief culprit been of his own blood, he would not have faltered in the career of duty.

Upon his return home, the commander learned that the law of nature, which he still studied and obeyed, was also the law of his country. It is believed to be the law of the civ lized world. Parbaps no name stands higher in British jurisprudence than that of Edward Law, atterwards Chief Justice of England, by the title of Lord Ellenborough. It Justice of England, by the title of Lord Ellenborough. In January, 1302, less han three months before he was promoted to the bench, he conducted, in his then capacity of Attorney General, a public prosecution against Joseph Wall for an alleged murder at the Island of Goree, in Africa, of which island he had been Governor. The act complained of was one of needless and atrocious cruelty. Under the pretence of a mutiny of dubtful existence, without a general or regimental court martial, of which the materials were at hand, and without any necessity arging immediate action, at the mutiny, it may, was past, the Governor had caused a soldier to be whipped 800 lashes with a rope eight times as thick as the ordina y cated injectails. To do the caused a soldier to be whipped 300 lashes with a cope eight times as thick as the ordina y cat-o'-nine-tails. To do the work effectually, be had employed five or six strong negroes, specially selected for the purpose, who, in the spirit of emulation, each whipped with all this might till be was of emulation, each whipped with all his might till be was tired, and then passed the rope to a fresh hand; and thus the rope went round among the negroes in succession until the whole number of lashes had been inflicted. The Governer had stood by to enjoy the scene, repeatedly urging the negroes to whip karder—"to cut him to the liver, to cut him to the beart." The soldier had died of his burts, and the brutal Governer was condemned and executed. But even on that occasion, when the torrest of righteous indignation seamed to be bearing all before it, the Autorney General rose above his feelings as a man to a sense of bis duty as the rose above his feelings as a man to a sense of bis duty as the representative of his king and country, and carefully laid down to the jury, as a landmark for their government, the great principle contained in the following extract from his

great principle contained in the following extract from his speech. The application of the extract to the case of the some is, generally and specially, in all its parts and bearings, is too obvious to need comment:

"But let it not," says he, "be understood on that account that there may not be circumstances—it will be for Governor Wall to snow that such circumstances existed—which may constitute a sufficient, accounte, and full defence for a mintary officer, in the infliction of punishment, without either a general or a regimental continuarial; for if there be that degree of imminent necessity which supercedes the recourse to any ordinary tribunal; if there be actually existing that flagrant mutiny which must either be suppressed by force, and by the immediate though irregular application of severe punishment, or must be left to rage uncontroiset, at the unsost peril of public safety, that which I was just now pronouncing to be irregular becomes, if the more regular and appropriate course of proceeding in such cases cannot be resorted to, itself regular and capable of being justified upon every principle of public cutty; for it cases cannot be resorted to, itself regular and capable of being justified upon every principle of public duty; for it imports the public safety that the means of resisting an enormous and overbearing evil should be as strong, sudden, and capable of application as the evil itself is capable of immediate misculevous effect; and if this has been the case here, it will carry its own justification with it. Gentlemen, upon this occasion, therefore, it will be most important for the prisoner to establish that there existed, in point of fact, a mutiny. When he bas established in poin of fact (if he can do so) that there existed a mutiny; if he can go faither, and show that the ordinary modes of that can do so) that there existed a mutiny; if he can go far ther, and show that the ordinary modes of trial could not be resorted to, and that, upon conference with the officers, that, which on the emergency was thought best to be done, was done, and that there was no wantou abu-e of power in the infliction of the punishment, the prisoner will be entitled to go quit of the charge made upon him by this indictinent."

Lord Chief Baron Macdonald, who presides at this trial (assisted by Justices Laurence and Rooke) macquivocally ratified the rule of law as laid down by the Attorney-timescal.

General. The great principle of universal jurisprudence thus laid down by the future Lord Ellenborough to the English jury, and confirmed by the English court had been previously recognized as a part of the American code, and carried into practice by Washington himself in the case of the Jersey nutiny in 1781. The following is extracted from Marshall's

practice by Washington himself in the case of the Jersey mutiny in 1781. The following is extracted from Marshall's Life of Washington:

"General Washington, who, though satisfied with the conduct both of the civil and military officers, had been extremely insortified at the issue of the mutiny in the Pennsylvania line, and who was now confident of the reliance to be placed in the indelity of the Eastern fromps who were composed of natives; determined by strong measures, to stop the further progress of a spirit which threatened the destriction of the array. In pursuance of this determination, he immediately ordered a detachment to march against the mutineers, and to bring them to unconditional submission. General How, who commanded this detachment, was instructed to make no terms with the insurgents, while they had arms in their hands, or were in a state of resistance; and as soon as they should surrender, to seize a few of the Idea must active leaders, and to execute them on the spot.—
These orders being promotly and implicitly obeyed, the Jersey mutineers were compelled to return to their duty."

The very words used by General Washing on in his letter to General Howe, dated 22d January, 1781, are as fellows: "If you succeed in bringing the revolted treops to surrender, you will instantly execute a few of the most active and incendiary leaders." This order for instantaneous execution could not have contemplated either a general or regimental Court Martial, the formation and action of which are always attended with some delay. It is true that General Howe says that "a field Court Martial was presently held." But this field, or as it is more generally called, drum head Court Martial, is not known to the statute law of this country or of England. It is the mere or attree of urgent necessity, which, as in the case of the Somers, may not brook delay; and it is of no more legal validity that the consultation of officers on board that vessel. Its design is simply to aid the judgement of the commander, and to show the Lord Mansfield and Loughborough in the case of Johnstone

against Sution :
"The salvation of this country depends upon the disci pline of the fleet; without discipline, they would be a rab-ble, dangerous only to their friends, and harmless to the enemy: Commanders in a day of battle," (and the same enemy: Commanders in a day of native," (and the same remark applies perhaps more strongly to a day of pressing mutury.)" must act upon delicate suspicious; upon the evidence of their owa eye." ||

Only one more authority will be cited. Sir James Marri-

\* XXVIII. Howell's State Trials, 60. \* IV. Marshall's Washington, 368. + VII. Spark's Washington, 381. ‡ XXVIL Howell's State Trials, 101. | L Duraford and East, 549.

WHOLE NO. 608. ott, the distinguished Admiralty judge, in a charge delivered by him to the jury in 1792, expresses binased as follows:
"You will call to mind continually the state and consisting of the parties concerned, the nature of the of the parties concerned, the nature of their lives, butters, and necessities. Consequently, in judging of matters committed upon the high seas, you will take into view the state of society upon that element, where all is violence. This consideration makes a great difference between actions at sea, and actions on land, where every thing comes within the sight and knowledge of the neighborh od, and where the peace and tranquillity of the subject is generally scare under a mild and moderate government. You have be judge of ferocious men, possessed of few but strong lives, pe bling to their employment; of men bardened by danger, an learto their employment; of men bardened by danger, an item less by habit. The subjects of your deliberation are active do se on a sudden; websenent from the nature and necessal of the occasion. The preservation of staps and fives deposit often upon some act of severe, but necessary used, the These scenes of violence present no very annable pattern busan untire; but such violence is frequently justified sometimes absolutely necessary; because, without u, commerce, no navigation, no defence of the kingdom, cobe maintained. The consideration of this should soften the rigor of judgement, which might otherwise be made on the by persons ignorant and inexperienced of what is done; sea. It is painful to observe that, without the greatest car by persons ignorant and inexperienced of what is some as sea. It is painful to observe that, without the greatest care in weighing of evidence, no commander or officer or a ship can be safe upon his trial. In charge of the Lives and pro-erties of other men, contending with the most ferocious, upan ungovernable element, a commander is placed every me ment in danger of the loss of character and life. A ship which there can be no hape of security for any man board, without a rapid and strong occasional exertion of an absolute power placed in one man. Like other governments and situations, the command of a ship is open to the most horrid general combinations and conspiracies, with all the consequences, fit to make the stoutest heart tremble. The passions operate at sea without control; and all on board of a ship is two often a scene of misery, terror, disorder, license resentment and revenge."

resentment and revenge."

The notice recently suggested that the council of officers on board the Sumers should have proceeded more formally, and, having first served writen charges on the accused, should have conducted the examination in their presence, subject to their cross-examination, and regular defence, could not have been carried into effect. Each of the three presence, account and have been carried into effect. Each of the three presence, account and have been carried into effect. persons executed had at the time of his arrest, been dis-incity informed of the charge against bim; and two of them had afterwards repeatedly plead guilty to the charge. The certainty of the guid of all the three, had been placed beyond peradventure by the ocular view of the commoner, and the summary inquest before the council of officers. A regular trial was atterly precluded by the exigency of tha with occasion. Necessity stood stern uniprie, and allowed to time for the ceremonies or celays of the law. The two investigations of the case on land, with every desire of he courts to proceed with despatch, have occupied, that before the Court of Inquiry at least twenty days, and the before the present Court Martial more than forty days; and had the proposed regular trial at sea continued but one-sent of the shortest of those times, it would, to a moral certainty have been interrupted and superceided by the threatened court to the proposed of the standard catastrophe, which, in the twinking of an eye, would have substituted, for the reign of law, "the reign of terror." The very exposure of the fact that the trial of the muliay was formally going on for life or for death, implicating of course the unconfined as well as the confined gully, would of tisely have produced a concussion that could not have failed to haster on the crisis. hesten on the crisis.

It has been sometimes said that the Somers might have

It has been sometimes said that the Somers migratures left at St. Thomas, in the custody of the Government there the prisoners who caused the danger. The propriety of such a course may be thought doubtful, even if the bright of uld have reached that island in salety. An American ship-of-war is always deemed competent to meet an enem from without of a force not superior to her ewn; muci more must she be deemed competent to meet and quell, by her own power, an enemy from within. If she is not capaher own power, an energy from the country before maintaining her own discipline, she ought not to be held worthy to fight her country's battles. It would seem to be a degradation to our flag for an American ship of war to lavoke the aid of a foreign government to sustain the discipline, or quell the insurrection of her own crew. discipline, or quell the insurrection of her own crew. But these speculations are foreign to the pending trial—The evidence repels the supposition that the Somers could have reached St. Thomas in safety with all the prisoners alive. There was every reason to believe that what the corpirators intended to do, they would do quickly. Mr. Wales had understood from Mr. Spencer that the mutin was to take effect very shortly, and even before their arrival at St. Thomas. The arrest of Mr. Spencer and six of his associates, instead of returding, was likely to accelerate the catastrophe. Under the exasperation crused by their arrest every thing indicated an immediate outbreas. The foreverties of the unconfined cuprits that the commander very thing indicated an immediate outbreak. every thing indicated an immediate outbreas. The fore bodings of the unconfined culpris that the communic might invoke even the arm of foreign law at St. Thomes and cause them to be sent home in irons, by safe conveying ces, to meet their country's down, lent the stimulant of des ces, to meet their country's doom, lent the simulant of desperation to the other causes of excitement; and it is more than probable that had the execution not taken place when it did, the equall which followed in the avenue of that ray would have been the signal for the final explosion. The beating away of the Somers for some other West Indiasiand would have been a still more dangerons expedient—The big would not have escaped the risks incident to the passage to St. Thomas; and the sunden ceparture from the snown course of the voyage would have been virtually an official admission that the multipy was too strong for the authorities of the ship, and that the beating away was but a flight from the dreaded danger to crave protection from the flight from the dreaded danger to crave protection from the trength to the ranks of the faithless. strength to the ranks of the faithless. It would have con-firmed the wavering in their adhesion to the mutiny, and impa ted resh courage to the confirmed in guid. That a crisis would have been suddenly forced on is almost beyone a doubt. The conspirances would have hesintted hile in the choice of the two paths before them—the one is saing to the irons, the prison, and the gallows of the law; the other conducting, as they would then have boldly expected, through blood and massacre, to a sure and prompt victory, sweetened by revenge, and crowning all their desperate hopes.

opes. 'To enable the Court the better to judge of the necessity

of the execution, permit me to bring the case to another test. Suppose that the execution had not taken place; that the unconfined malconients had risen and released the principle that the mutup bad triumphed, and the brig been turned into a pratical cruiser; that the faithful of the offi

turned into a pratical cruiser; that the faithful of the offi-cers and crew had been all massacred, except the command-er alone; that, from a refinement in cruelty, the prairies had-spared his wretched life, and sent him on sho e that he might be forced to wend home his olitary way, and become him-self the disgraced narrator of what would then indeed have been the 'tragedy of the Somers'. With what a buss of ta-dignation would the country have received his narrative! How would the American press, with its thou and tongues, have overwhelmed him with excimnations and interiogato-ries like these: "You were seasonably urged, by the juna-mous voice of your trusty officers, to have their lives, the How would the American press, with its thousand tongues, have overwhelmed him with exciamations and interrogatories like these: "You were seasonably urged, by the, innanimous voice of your trusty officers, to have their lives, the lives of your faithful is a men, and the honor of your country, by the timely execution of these male actors, who deserved to die, and whose immediate death was imperiously demanded by the exigencies of the case. Why did you not heed the counsel, the earnest coursel of your a-sociales is authority—your constitutional advisers—with whose opinion your own too concurred? You did not, because you dared not. You faltered in the path of known and acknowledged dity, because you wanted moral courage to tread it. On you, in the judgement of conscience, devotives the responsibility of those nurders, which you might and ought to have prevented. On you recoils the disgrace of that flag which never sustained a blocuntil it was committed to your charge." To finish the picture, permit me to fill up another part of the canvass. Suppose that the Somers, now turned pirate, while cruising off our coast, had been permitted by heaven, in an evil bour, to capture some vessel plying between this and Europe, fleighted with the talent and beauty of the land. The men are all murdered, and the temales, including perhaps the new made wife, and maidens just blooming into womanhood, are forced to become the bridge of pirates. A priversal shriek of agony bursts from the American people throughout all their vast domains; and the walling is echoed back from the whole civilized world. And where then could the commander of the Somers have hidden his head, branded, as it would have been, by a mark of islamy as insecible as that stamped on the forchead of Cair, The case of the Somers may form an epoch in our navail history. Should the course of the Commander be approved The case of the Somers may form an epoch in our savain history. Should the course of the commander be approved by his Country, mutinies in our ships of war will probably be reatter be of rare occurrence. But should this Cour, or the high tribunal of public opinion, pronounce senience of condemnation on the course which he felt himself bound to content this respectivity yet salemaly submitted that the the high tribunal of public opinion, pronounce senience of condemnation on the course which he felt himself bound to pursue, it is respectfully yet solennily submitted that the sentence will be the signal for the general prevalence of insubordination in our navy. The means and surjects of muthous excitement are always at hand. Filled with men or mixed national character; crowded with spirits as turbulent as the element on which they dwell, the ship's berth-deck ever abounds in materials of combustion, which a single spark may ignite. The commander must quench the flame, even if it is sometimes cone by the sacrifice of life. He must suppress a mutiny in his little empire by the application of all needful force. No degree of force is superfluous er unlawful, that is necessary for the suppression. Effectival suppression is the only point at which he can rightfully slop. He must move to that point with a cautious, not with a faltering step. He must employ gentle means, if they will reach the evil; if not, he must resort to severer measures, and if need be even to the severes. He may give such time to mild expedients as the safety of the ship will allow; not a moment langer. But if his Country's Repreach is to be the meed of his faithfulness, other commanders will take warning from his example. They will suffer the rage of mutiny to pursue its fearful course, rather than arrest it by the sure sacrifice of their own character. They will risk the chance of being cloven down at san by the weapons of the mutineers, leaving to them the choice of time, place, and mode of attack, rather than incur the certain fate of perishing at home by the daggers of calumny. They love their country; for their native land they would cheerfully die; but they cannot even for that beloved Country, willingly lose for ever their own most precious character—The love of character is not the least of the motives which have indiged them to relinquish their peaceful hearths, and make their bome on the unquiet seas. And to sacrifice their good name

the altar of public weal, requires a sublimity of patriotism beyond the flight of ordinary men.

Discipline is the first and second and third virtue in the naval code. It was discipline, perhaps more than even courage, which, during our last war with England, enabled our little navy to work its miracles on the lases and upon the ocean. Of these glorious achievements the commander of the Somers may speak without egotism, for he was not then of an age to participate in their dangers or their fame. The electric shock then communicated to an assurated world can never be forgotten; for it has passed into the immortal pages of history. The great firitish historian of the present century speaks of it in these glowing terms:—

When therefore, he says, "it was seen that in repeated instances of combats of single vessels of the same class instances of combats of single vessels of the same class against each other, the snips of the United States had proved victorious, the English were stronged as by the shock of an other stronger as by the shock of an other stronger as by the shock of an other stronger as the shock of the stronger as the shock of the stronger as the s earthquake; the Americans were immeasurably, and with good reason, elated; and the other nations in Europe thought they discerned at last the small cloud arising over the ocean

\* Bee's Reports, 110.

which was to involve the British maritime power in destruption." And the cause of these elseomfitares the same author more than hints at in the next page but one. He ther say— Experience had now proved, that long continued and unexampled success had produced its wonted effect in relaxing the bands of British rawel preparation; and that they had much need to recollect that, in the language of the ancient conquerors of the world, the word for an urmy was derived from the verb to exercise." It was, then it a Spartian discipline of our navy, no less than its as army was derived from the verb to erercise." It was, then, I e Spartan discipline of our navy, so less than its Spartan valor, that esabled it to triamph over the proud mistress of the ocean. Let discipline for ever be regarded as its sheet anchor; and let it never be forgotten that sub-ontinal; in it he life, and mutiny the death of discipline. In this view of the subject, the nominal party, here sinks hate comparative unimportance, and the American nation warms its august form, entrealing that her youngest, her favorie-offspring may be saved from its worst enemy—that it may be saved from the demoralizing, destructive principle in insulvortination.

All of insubordination.
All of which is respectfully submitted.
ALEXANDER SLIDELL MACKENZIE. X. Alison's History of Europe, 672.

After the reading of this document was concluded, the Court was cleared for the purpose of reading over the whole proceedings of the Court. The optaion of the Court will then be given, and will not be made public antil it has been forwarded

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act of it, during the coming searon, and good city bonds and mactanges received in payment. Address "Lime," 97 tr BANK NOTES of the Union Bank Dover, New Jersey, wanted at half percent discount, JOHN T. SMITH & CO.

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man Silver!-JAMES G. MOFFET, 121 Prince-street, New York, offers for sale wholesale and retail, 1500 lbs. of German Silver, at the lowest market prices.

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ommon English letters; and one of them states that they looked like crosses, and that the paper had on its back geo-metrical figures. The lestimony of these three witnesses amounts to design stration that Gromwell was not only a conspirator, but a ringleader in the conspiracy. His knowedge and approval of the Greek paper, utterly precludes the possibility of his impocence. By knowing and approv-ng the paper, he in effect subscribed his name thereto; he

had special stations assigned them by name, strangthens the conviction that Cromwell, and no less a character, was the

their policy required that he should not be circumscribed,

when the outbreak should occur by any particular limits of place or of service. He was to be not only officer of the

deak, where the main struggle was expected, but was to

act throughout as the master spirit of tomult and of death;

and, clothed with a sort of evil ubiquity, was to interpose bis malign counsel and giant strength wherever they should most be needed. His pe sisting in the declaration of his in soccace at the time of the execution, only proves that he was a more hardened offerder than either Mr. Spencer or

Small. Much their senior in years, he had been longer educating in the various schools of vice. Besides, his own name not being on the Greek paper, there was, he knew.

no record evidence of his guilt. It is a well known fact in

the history of crime, proved by all the books on criminal

haw, that veterans in iniquity have seriom or never those compunctions visitings of nature, which often extort contracts on their guilt from younger and less disciplined of finders. The declaration by Mr. Spencer that Gromwell was innocent might have been owing to some deep pledge,

like the oath of a bandit on his drawn dick, which Gro well had adroidy exacted, that, in case of discovery, his adhesion to the mutiny should, under all circumstances, be

kept secret; or it might have been owing to a hope graspe

at by Mr Spencer that Cromwell, if set at liberty by his means, would rouse his associates, and rescue him even at the last moment. What makes it most probable that this declaration was caused by the metive last mentioned, is the remarkable fact that, during the half hour preceding his death, when a'l hope of escape had vanished, Mr. Spencer ceased to say any thing of Cromwell's innecence. He was collected and tranquil, seemingly carnest to make his peace with God, and with such of his shipmates as he had chieffy

with God, and with such of his shipmates as he had chiefly Of Small, whom he had seduced from duty, he

and, when he came, begged to be forgiven by him for tam periog with his fidelity. But to Cromwell, his bosom asso-ciate, who, apon the supposition of his innocence, was the individual of all others most injured—who had been involved by his treacherous friend in unfounded suspicions and falta-

ious proofs, just about to consign him to the gallows-whose

brood at the dread tribunal above would call loudest for vengeance against his destroyer—whose forgiveness was to be instantly and eagerly sought by tears and prayers as the

only expiation that could be made-to him Mr. Speacer

opened not his lips. He asked not forgiveness from Cromwell, though they calmly met face to face, and paused as they met, almost touching each other in their way to the execution, because he well knew that Cromwell, instead of being his victim, had been his prompter in guild. To his

were the prime conspirators. It follows that they had for eited their lives to the laws of their nigared country. For this regard the supplication of the prime conspirators. It follows that they had for eited their lives to the laws of their nigared country. For this consequent we the prime conspirators.

it is enacted by the thirteenth article of the first section of the Act of Congress of 1210, that "If any person in the navy shall make or attempt to make any mutinous assembly, he shallon conviction thereof by a Court Martial, suffer death." But hythe Act of 1806, the statutory punishment of a mutiny on land is to be measured out by the discretion of a Court Martial. The Court may exact life, or it cretion of a Court Martial. The Court may exact life, or it cretion of a court Martial.

need the evil intent be bouled forth in action, to complete the legal crime. The mutineus imagining of a single heart if revealed to a single ear, with a corrupting purpose, brings down on the offender, the death bearing sentence of the law. Not only a mutiny, but the "attempt" to create \*ne in the naval service, is, by the words of the strutte, punishable with loss of lite.

But it does not follow, nor is it pretended, that because Mr. Spencer, Cromwell and Small had forfeited their lives the commander of the Somers might therefore sirect tyem.

the commander of the Somers might therefore direct them to be executed. It is admitted that under ordinary carcumstances, it would have been his duty to detain them in safe custody, and bring them home to be tried. But it is muriny was of an unusual and unprecedented character. It created a case which the statute law did not contemplate, and could not reach. It was believed, and for reasons of overwhelming force, that neither Mr. Spencer, nor Gromwell, nor Small, could have been brought into part, without the most imminent jeopardy to the brig and the lives of the trithful officers and crew. It was on this ground—the unviciding ground of imperative necessity—that the commander of the Somers found himself placed, when he reluctantly directed the execution of Mr. Spencer, Cromwell, and Small. And

virtually affixe i his own proper signature to the treasonable and nurderous league. We need not puise to inquire whether he saw or rad read to him both pieces of the pa-per; for each part, and every sentence of each part, heper; for each part, and every sentence of each part, be-trayed the existence of a conspiracy, baving for its object murder and phacy.
That the name of Cromwell does not appear on the Greek

ping the disguise so warily sought; and the suggestion that Andrews might have been his true name, and Small only an assumed one, is repelled by the unimpeached witness who has sworn that he knew him from his indacy, and his father and grandfather before him, and that he never went by the name of Andrews, butalways by that of Small. That no particular post in the meditated massacre was assigned in the Greek paper to the person designated as Andrews, while Mr. Spencer, Small, McKee, McKintey and Wilson

Defence.

May it please the Court:

The first three charges under trial and on which you are to pass judgement, have for their common sulpet the execution of Midshipman Philip Spencer, Boatswain's Mate Samuel Cromwell, and Seaman Elisha Small, on board the United States being Novement the light State.

the persons executed were parties to that conspiracy.

stamp of incontestable verity.

No valid objection results from the circumstance that the Greek paper contains only three conspirators marked cer-tain, exclusive of Mr. Waies, the other manes on the paper heing entered either in the doubtful list, or in the list of persons to be detained on board at all events. This paper had doubtless been prepared at the in spiracy, when in truth there were only three confirmed as spiracy, when in truth there were only three confirmed associates. It appears that some time before the disclosure to Mr. Wales, Mr. spencer had, on several occasions, exhibited the Greek paper to one of his associates in guilt; and that it was even then a paper soiled with use. The paper having been thus prepared when the number of confirmed conspirators was in fact only three, it was not afterwards deemed necessary, as proselytes were daily multiplied, to transpose their names from either of the other lists to that marked certain, or even to add their names to the paper at. marked certain, or even to add their names to the paper at att. The list marked certain, for instance, does not contain the name of Small; nor is his name to be found in any part of the paper, except where a prominent post at the meditated massacre is assigned him. So there was a like omission to add to the list the names of there was a like omis-sion to add to the list the names of the other new accessa-ries, though the band of determined conspirators had al-ready increased from the original number of three to the formidable number of twenty. It is possible that the name of Mr. Wales might have been inserted in the paper after Mr. Spencer's conversation with him, as, from his being un officer, his accession would be thought of peculiar impor-tance; but more probably his name was placed there when the paper was first written. The existence of a misunder-spanding ofsome duration between the commander and Mr.

the paper was first written. The existence of a minunder-standing of some duration between the commander and Mr. Wales was notoribus; and it is not strange that the conspira-tors, judging of his feelings and principles by their own, should have placed his name, even without consulting him, in the front rank of the conspiracy.

I pass over, at least for the present, many other parts of the evidence, tending to show the existence of the conspira-cy, and the guilt of Mr. Spencer and Small, and proceed at once to the final scene just before the execution. There Mr. Spencer and Small, with their dying lips voluntarily con-

once to the failth the presence of the Soften and crow for the region the presence of the Soften and crow special services that the presence of the Soften and crow special services and the presence of the Soften and crow special services and the that his time was short; his intimacy with Mr. Spencer, receiving gitts from him in money and other articles, and spending with him hour after hour almost daily is deep and secret consultation, an intimacy made more unspicious by the difference in the rank of the parties; his being asked by Mr. Spencer in private conversation, whether he could disguise the brig so that she would not be known, and his saying that he could easily do it; his advising Mr. Spencer, in another private conversation, to have the bosons of the Somets cut away and her launch thrown overboard, with a view to render her more fit for pratical service, in singular concidence with the subsequent declaration of Mr. Spencer to Mr. Vales, that he meant to have thost things done; his being overheard to say to Small that they would soon be able to see the Isle of Plues (a noted rendezvous for pirates), also